

G. PUBLIC PARTICIPATION IN THE PERMITTING PROCESS

For public participation to be effective, the public must have knowledge of injection or disposal well activities prior to the start-up of operations. To satisfy this need, the Commission requires a publication of notice in order to apply for an injection application. The notice must be placed in a newspaper of general circulation in the county in which the proposed injection or disposal well is located. Proof of publication is an affidavit from the newspaper which must be notarized. The newspaper forwards the proof to the Commission, where it becomes a part of the application file. The publication must set out the location of the proposed well, the operator's name and address, geologic name and depth of injection zone, maximum injection pressures and maximum injection rates.

Copies of the application must also be furnished to the owner of the surface land on which the proposed well is located and to each operator of a leasehold within one-half (1/2) mile of the well location. The applicant must file an affidavit of delivery of mailing of such applications within five (5) days of filing. The affidavit is simply a signed statement listing to whom copies of the application were delivered.

Requests for a hearing on any injection application may be made by the public within fifteen (15) days following publication of notice. The UIC Director may also refer an application for hearing if he deems if necessary after a review of data submitted by the applicant. Applications which provoke no protests are eligible for administrative consideration by the Director of the UIC program.

Following notice of the hearing to all interested parties, the Commission will hear the views of each testifier prior to making a determination as to approval or rejection of the permit. Public hearings on injection activities are held in the Jim Thorpe Building every Monday.

If there later develops any significant changes in the project area, injection pressure or injection zone authorized for an injection or disposal well, any citizen may request that the Commission modify the existing Order. If this occurs, similar public notice requirements and procedures as those outlined previously apply.

IV. STATEMENT OF LEGAL AUTHORITY

Oklahoma
Injection Control Program:

State Class II well program demonstrations under Section 1425 of the Safe Drinking Water Act (SDWA) must satisfy the requirements of Section 1421 (b)(1)(A)-(D) and demonstrate an effective program to prevent underground injection that endangers drinking water sources.

Subsection (A) requires the state program to prohibit any underground injection that is not authorized by permit or rule. Such prohibition has been in place and effective in Oklahoma for decades. The policy of the State of Oklahoma is to prevent any injection or abandonment that would cause pollution or endanger fresh water (52 Okl. St. Ann. 309). The implementation of such policy, rooted in the police power of Oklahoma, is the responsibility of the Commission's statutes in Title 52 gives the authority, Section 139 of the Commission's statutes in Title 52 gives the authority, jurisdiction, power and duty to make and enforce rules preventing pollution of any surface or subsurface water (see also Section 141 of Title 52). Such rules and regulations have been adopted by the Commission, are continually being revised, and have the force and effect of law [(see, for instance, Amex Petroleum Corp. v. Corp. Comm., 552 P. 2d 387C 1976)].

Rule 3-301 of the Commission carries the statutory policy into a rule that prohibits any injection without an order (permit) of the Commission. The Commission does not issue an order until the applicant satisfies the Commission that the injection will not endanger fresh water. Rules 3-303 and 3-304 require the applicant to submit with Form 1015, a comprehensive set of data, plans and procedures in order for the Commission to make an informed judgment. Therefore, the requirement of Section 1421 (E)(1)(B)(i) of the SDWA is clearly met.

Subsection (ii) of the same section requires that the Commission will not promulgate any rule which would endanger drinking water sources. The Commission is prohibited from, and has the statutory duty to abstain from issuing any rule that endangers drinking water sources (52 Okl. St. Ann. 139). All existing injection wells are currently authorized by order (permit), all new Class II wells will be authorized only by order and no authorization by rule is permitted by the Commission's rules (see Rules 3-300, 3-301 and 3-304).

Section 1421 (b)(1)(C) requires the state program to include inspection, monitoring, recordkeeping and reporting requirements. The state program includes all of the above and requires a permittee to allow entry by the inspectors for purposes of investigation and inspection, and to monitor and report on its activities. The program also includes such responsibilities with respect to the Commission and reporting to the EPA. Such powers are based on the duty to regulate in 52 Okl. Ann. St. 139 and 141. The operating, monitoring and recordkeeping requirements of permittees are regulated by Rules 3-305 and 3-306.

Under 52 Okl. St. Ann. 153, the Director of Conservation, the Manager of Field Operations, District Managers and Field Supervisors have the authority of a peace officer and therefore have the authority to enter, to inspect and to make investigations upon and of any oil or gas lease or property as necessary in the performance of their duties. Inspection authority has been in place since 1933, and currently, there are 50 Field Inspectors whose duty it is to ensure that all permittees, etc. are complying with the rules of the Commission and any special conditions of the order, including any mechanical integrity tests, plugging and abandonment or remedial (corrective) action necessary.

Section 1421 (b)(1)(D) of the SDWA requires, as part of a state Section 1425 application, that the Oklahoma State program must apply:

- "(i) as prescribed by section 1447 (b), to underground injection by Federal agencies, and
- (ii) to underground injections by any other person whether or not occurring on property owned or leased by the United States."

The program of the Oklahoma Corporation Commission presently applies to injections by Federal agencies and any operator on property owned or leased by the United States. The Oklahoma statutes grant the Commission the authority to regulate oil and gas wells, including injection or disposal wells (see 52 Okl. St. Ann. Section 309). Chapter 4 of Title 52, entitled Regulation and Inspection of Wells, includes Section 317, the definition of "person":

"... any individual, business association or corporation, partnership, governmental or political subdivision, public corporation, body politic and corporate public authority, trust or any other legal entity."

This comprehensive definition clearly provides the Commission the authority to regulate any activity within the state relating to drilling, injecting or disposing of wastes from oil and gas operations.

Activities covered by Chapter 4 (and others) by Federal agencies or facilities will be regulated by the Commission in the same manner as any other local person. Oklahoma therefore has authority independent of Section 1447 of the SDWA to regulate injections by Federal agencies or by persons operating on lands owned or leased by the United States. This authority presently includes operators on Indian lands other than the Osage Mineral Reserve.

In Currey v. Corporation Commission, 1980, 617 P. 2d 177, cert. app., the Oklahoma Supreme Court held that the Commission has the constitutional and statutory authority to regulate the operator of a purging well on lands of the Cherokee Nation and to require the operator to repair the well. The Court in Currey also cited a lower court holding in Ashland Oil v. Corporation Commission, 1979, 595 P. 2d 423, that the Commission has the authority to impose remedial or corrective action (repair, replug, etc.) on a well, in order to protect fresh water. See also Hall-Jones Oil Corp. v. Corp. Comm. 1971, 485 P. 2d 744.

An issue of Ashland and Hall-Jones was the protection of fresh water by the Commission under its regulations. Relying on the authority of the Commission to enforce the operator requirements of 520 Okl. St. Ann. 309, et seq and regulations issued pursuant thereto, the Court in Ashland agreed with the Commission that it could require remedial action to protect fresh water. The Court found the rules and regulations of the Commission as reasonable and proper and stated:

"This Court may not substitute its judgment for that of the Commission. . . .",

when interpreting such rules.

It is therefore my opinion that the Commission has the authority to regulate disposal and injection wells in order to protect fresh water as defined in the Commission's rules.

These constitutional, statutory and common law authorities in my opinion have been exercised in such manner as to establish and maintain an effective program that prevent the pollution of underground drinking water sources. Other aspects of the effective program are described elsewhere in this application. A listing of the applicable parts of the Oklahoma Constitution, statutes and regulation follows.

SYNOPSIS OF OKLAHOMA CORPORATION COMMISSION STATUTES AND RULES
RELATING TO THE OPERATION OF A CLASS II
UNDERGROUND INJECTION CONTROL PROGRAM

The Oklahoma Corporation Commission was created by Article 9, Section 15, Oklahoma Constitution, which provides for the agency to supervise, regulate and control all transportation and transmission companies doing business in the state.

Specific statutory jurisdiction over all matters relating to the production of oil and gas exists by virtue of Sections 139 - 153, Title 52, Oklahoma Statutes 1971:

Section 139 vests the Commission with jurisdiction and rule-making authority to protect both surface and subsurface waters of the state from pollution associated with gas and oil production.

Section 140 authorizes rules to be adopted to prevent pollution from earthen storage ponds.

Section 141 authorizes the issuance of rules and prescribes a method for appeal and/or amendment of such rules.

Section 142 requires other state agencies to cooperate with the Corporation Commission in preventing the pollution of water caused by the handling or processing of deleterious substances associated with oil and gas production.

Section 143 provides for penalties for the violation of rules or orders issued by the Commission in its efforts to protect surface and subsurface waters.

Section 144 makes the preceding cited sections cumulative to all other statutory authority which involves prevention of pollution of fresh water, and clarifies that the operator of a process polluting fresh water may be liable under separate civil and criminal statutes.

Section 145 clarifies the right of property owners to sue for damages where injury has ensued from deleterious substances associated with oil and gas production.

Section 146 provides the right of eminent domain to the Commission for enforcement of orders affecting pipelines.

Section 147 allows oil and gas operators, in cases where the necessity can be demonstrated, to exercise eminent domain in order to comply with

commission orders concerning the disposal of deleterious substances which may pollute fresh water.

Section 148 establishes court procedure for the exercise of eminent domain.

An Oil and Gas Conservation Division has been created within the Corporation Commission under authority of Sections 149 - 153, Title 52, Oklahoma Statutes 1971. The Division has the primary duty

"to aid the Commission in the administration and performance of the powers, duties and functions of the Commission with respect to oil and gas conservation and the prevention of pollution resulting from oil and gas production, transportation and refining operations." (Emphasis added)

These sections further provide for appropriately qualified personnel to carry out these duties, including the following:

- 1) A Director of Conservation.
- 2) Two licensed Conservation Attorneys.
- 3) A Manager of Pollution Abatement.
- 4) A Manager of Field Operations.
- 5) A Manager of Office Administration.
- 6) A Data Processing Section.
- 7) A staff of petroleum engineers and geologists, who are to provide the Commission and its Trial Examiners and Hearings Officers with technical advice and assistance as needed "with respect to oil and gas conservation and the prevention of pollution." (Emphasis added)
- 8) Four District Managers, to supervise field office personnel in carrying out all duties of the Commission in regard to oil and gas operations.
- 9) Thirty-two field supervisors who serve as enforcement officers and representatives of the Commission in administration and enforcement of rules, regulations and orders relating to "both oil and gas conservation and the prevention of pollution." (Emphasis added)
- 10) Trial Examiners to hear cases directed to them by the Commission.
- 11) Court Reporters.
- 12) A statistical unit to procure and analyze all pertinent oil and gas production or operation data required with respect to oil and gas conservation and prevention of pollution.
- 13) A secretarial-clerical staff.

Section 150 establishes a classification and salary system for the aforementioned personnel.

Section 151 allows consolidation of these functions as necessary for more effective performance of duties.

Section 152 provides for funds for salaries, expenses and travel of conservation division personnel.

Section 153 confers peace officer authority on conservation division personnel and allows them to enter any oil or gas lease or property as necessary to perform their duties. (Emphasis added)

Authority to enforce the foregoing provisions and others needed by the Commission in performance of its duties was originally granted in 1915, and is codified as Section 243, Title 52, Oklahoma Statutes 1971, which reads in part:

"The Corporation Commission shall have authority to make regulations for the prevention of waste of natural gas and for the protection of all natural gas, fresh water, and oil bearing strata encountered in any well drilled for oil or natural gas. . . ." (Emphasis added)

This provision was upheld in Ashland Oil, Inc. v. Corporation Commission, Okl., 595 P. 2d 423 (1979).

Authority to adopt rules and regulations for the plugging of abandoned oil and gas wells was originally granted to the Commission in 1917, by virtue of Section 53, Title 17, Oklahoma Statutes 1971. The validity of this section was upheld in Amax Petroleum Corporation v. Corporation Commission, Okl., 552 P. 2d 387 (1976), where the court denied a charge of unconstitutional vagueness and improper delegation of legislative authority.

In Hall-Jones Oil Corporation v. Corporation Commission of Oklahoma, 485 P. 2d 744, Oklahoma Supreme Court held "Corporation Commission's unrefuted finding that salt water was corrosive and could corrode through surface casing, which had not been pressure tested after drilling operations" was sufficient to deny petitioner's application for relief from an order denying him permission to dispose of salt water by injection into the annulus between the production and surface casing.

These and other cases cited in the attached annotated statutes clearly define the Corporation Commission's authority over plugging and repair of wells which threaten drinking water.

Plugging and repair of oil, gas or disposal wells which may be endangering surface or subsurface waters is specifically provided for by statute, as set out in Sections 309 - 318, Title 52, Oklahoma Statutes 1971:

Section 309 declares it in the public interest to protect the lands and waters of the state from pollution, and to provide "additional means whereby wells drilled for the exploration, development, or production of oil and gas, or as injection or disposal wells, and which are causing surface or subsurface pollution of any fresh water or are leaking salt water, oil, gas or other deleterious substances . . . may be plugged, replugged or repaired by the Corporation Commission or under the authority and direction of the Corporation Commission." (Emphasis supplied)

Section 310 provides for notice and hearing to establish lack of well's mechanical integrity, followed by steps leading to emergency and/or long-term remedial action to prevent pollution.

Section 311 limits the liability of any person who is authorized entry onto a lease by the Commission for the purpose of performing remedial work on a purging well.

Section 312 limits the liability of a person authorized to repair a well in regard to and future or subsequent remedial work required on said well.

Section 313 protects those who support a Commission proceeding to repair a well, or who do remedial work at the direction of the Commission, from having such work viewed as an automatic admission of guilt or liability in any cause arising from such instance.

Section 314 allows a right of action by a person who repairs a purging well against the owner or operator who has the legal obligation to maintain the well. A lien is created upon the owner or operator's oil and gas rights and equipment in the amount of the repairs undertaken.

Section 315 makes it clear that these provisions do not relieve the owner-operator of a well from his legal responsibility to properly maintain his well, but merely provide an additional means to accomplish this when he fails to do so.

Section 316 requires all plugging or repair proceedings be undertaken in accordance with the established administrative procedures outlined in Sections 84-135, Title 52, Oklahoma Statutes 1971 (generally, Oklahoma's spacing and pooling laws).

Section 317 defines "person" as "any individual, business association or corporation, partnership, governmental or political subdivision, public corporation, body politic and corporate public authority, trust or any other legal entity." Since federal agencies and facilities are not specifically excluded from this definition of "any other legal entity", we feel the entire weight of the state's statutory and regulatory framework does apply to UIC matters involving federal lands or agencies.

Section 318 requires the Commission to undertake well plugging or remedial work only by competitive bidding and only in an annual aggregate amount as authorized during each legislative session.

Section 318.1 requires all operators of exploration, development or production, or injection or disposal wells, to file statements of net worth of at least \$10,000 with the Commission prior to commencing operations. The operator must agree to operate his wells in compliance with all statutory and administrative requirements of the Commission, or forfeit an amount necessary to correct any condition of non-compliance.

Further statutory authority for the Corporation Commission to prevent pollution of fresh water is found in Section 7-401, Title 29, Oklahoma Statutes Supplement 1980 (The State Wildlife Code). This section gives the Commission the power to order corrective action in cases involving pollution from salt water, crude oil or substances resulting from operations of the petroleum industry.

By virtue of Sections 932 - 937 of Title 82, Oklahoma Statutes Supplement 1980, the Corporation Commission is made a member of the State Pollution Control Coordinating Board. The Board and its administrative arm, the Department of Pollution Control, has the charge:

" . . . to establish and maintain a coordinated, continuing surveillance of the waters, air and other natural resources of this state, hereinafter referred to as the 'environment' of this state for the purpose of controlling the quality of the environment and for preventing and abating any pollution thereof, whether the source

of such pollution is within or without the state, through an enforcement of laws relating thereto and a maximum utilization of existing resources and facilities of state agencies having pollution control responsibilities under existing and subsequently enacted laws."

Also having a bearing on the protection of fresh water from oil and gas producing operations are those sections of the Oklahoma Statutes which constitute the law on forced pooling and spacing. These are found in Sections 86.2 - 120, Title 52, Oklahoma Statutes 1971, as amended by adoption of a new Section 87.1 as found in Title 52 of the Oklahoma Statutes Supplement 1980.

Due to the extreme length of these sections, they will be described in very capsulized form, as follows:

- 86.2: Provides for conservation of oil and protection of fresh water strata.
- 86.3: Provides for protection of fresh water strata and conservation of natural gas.
- 86.4: Empowers the Commission to make all orders, rules and regulations applicable to each common source of supply alike.
- 86.5: Provides any action under the act shall be subject to the procedural requirements included in said act.
- 87.1: Empowers the Commission, following notice and hearing, to issue spacing and pooling orders.
- 91: Provides for meters on pipelines for inspection.
- 92: Requires reports of oil purchased or transported.
- 93: Requires operators to keep books on oil produced or sold.
- 94: Allows the Commission to require maps and drawings of all pipelines, connections, pumps and tanks.
- 95: Provides penalties for refusal to file required reports.
- 96: Requires operators to verify any reports or filings.
- 97: Empowers the Commission to make and issue rules and regulations necessary in connection with common sources of supply.
- 98: Gives the Commission powers of a court of record in connection with proration from common sources of supply.
- 99: Provides for filings of papers and documents.
- 100: Provides for witnesses' depositions.
- 101 - 103: Provides for enforcement of rules and issuance of fines and contempt citations.
- 104: Right of entry by Commission officials.
- 105: Power to close wells and regulate production.
- 106: Notice.
- 107: Process and Service.
- 108: Oaths, perjury and punishment.
- 109: False verification of documents.
- 110: Determination of reasonable market demand and transportation facilities.
- 111: Disallowance of collateral attack on orders, rules and regulations, and appeal to Supreme Court of Oklahoma.
- 112: Applications to amend or modify orders.
- 113: Powers of Oklahoma Supreme Court over appeals.
- 114: Penalty for obstructing agents of Commissions.
- 115: Punishment for conspiracy to violate proration statutes.

- 117: Punishment for offering orders, rules or regulations.
- 118: Punishment for offering bribe.
- 119: Immunity for accepting bribe.
- 120: Clarification that any of the foregoing specific grants of power to the Commission "shall not limit the general powers of the Commission with respect to the prevention of pollution and conservation."

The foregoing constitutional, statutory and case citations constitute the legal authority under which the Oklahoma Corporation Commission proposes to establish, and has established, its underground injection control program. Additional authority for the program exists in the form of the proposed rules and forms which will be described below, and which have been adopted by the Commission for the UIC program in procedural conformance with the Oklahoma Administrative Procedures Act (75 O.S. 1971, Sections 301 - 327).

The revision of Underground Injection Control rules and forms in Oklahoma was the joint effort of an ad hoc committee proposed by the UIC Director, Mr. T. A. Minton. The Committee had membership from the Corporation Commission, the Oil and Gas Industry, environmental groups such as the Sierra Club, the Interstate Oil and Gas Compact Commission, the Mid-Continent Oil and Gas Association, and the Oklahoma Independent Petroleum Association.

While Oklahoma's rules to protect ground water from the potentially harmful effects of injection operations were already among the most effective in the nation due to our long period of experience with drilling, exploration, production and disposal operations, the revised rules provide these additional benefits:

1. Tighten up the organization of the rules, by placing logically related sections in one place.
2. Strengthen definitional items including the chemical characteristics of fresh water.
3. Provide for additional demonstrations of the facts involved in each application for a well, and for the maintenance of its mechanical integrity.

A discussion of the rules on a section-by-section basis follows:

Section 1-101. Definitions:

Defines fresh water as surface or subsurface water containing less than 10,000 mg/liter total dissolved solids or less than 5,000 ppm chlorides.

Defines unit operations as those consisting of a portion of a lease, a lease, or more than one lease covering contiguous lands containing one or more common sources of supply, which has been unitized by Commission Order.

Defines duly authorized representative as the person responsible for an underground injection well.

Specifies that a well drilled or used for production of oil or gas within an enhanced recovery project shall not be located less than 165 feet from the lease or project line.

Section 2-240:

Sets out the rules and procedures for enhanced recovery project allowables, including pressure maintenance, gas repressuring and waterflood projects.

Section 3-300:

Provides for the classification of Underground Injection Wells as Enhanced Recovery Injection Wells, Disposal Wells or Storage Wells.

Section 3-301:

Prohibits any subsurface injection or disposal without authorization by Commission Order.

Requires that any well used for injection or disposal be cased and tested in accordance with Commission rules.

Section 3-302:

Defines an existing enhanced recovery well as one authorized by Commission Order on the effective date of this rule, and prohibits injection into any such well unless the operator has completed a Form 1070 (Inventory of Existing Authorized Enhanced Recovery Injection Well) within one year of adoption of this rule.

Includes a similar definition and requirement for completion of Inventory Form (1071) for existing disposal wells.

Section 3-303:

Establishes the application process and all technical data and information requirements for Enhanced Recovery Projects, including geologic characteristics, plans for testing casing, nature of injected materials, pressures for injection, tables of gas-oil ratio and water production tests, and the proposed plan of development for the area included within the project.

Section 3-304:

Establishes the application process and all technical data and information requirements for Enhanced Recovery Injection and Disposal Operations. This procedure is for singly-permitted wells, as opposed to projects. The application is to be accompanied by a plat of the affected area; for drilled wells a copy of the Completion Report (Form 1002A) along with any available electric or radioactivity logs; A schematic diagram of the well showing total depth, depth of injection or disposal

interval, geologic name of disposal or injection zone, depths of tops and bottoms of casing and cement, and size of casing and tubing and depths of packer; Assurance that proposed injection rates will not initiate fractures through overlying strata and present a danger to fresh water; proposed operating data including daily injection rates and pressure, analysis of fresh water samples from freshwater wells within one mile; analysis of water to be injected; and vertical distance separating top of injection zone from base of lowest freshwater strata. Re-quirements for notice and hearing procedure are also included in this rule.

Section 3-305:

Establishes operating requirements for Enhanced Recovery Injection and Disposal Wells, including inspection, testing and mechanical integrity pressure and monitoring procedures and reporting requirements.

Section 3-306:

Establishes monitoring and reporting requirements on specified Commission forms for Enhanced Recovery Injection and Disposal Wells. Contains provisions for shutting down wells where mechanical problems may be endangering fresh water sources.

Section 3-307:

Authorizes Commission to issue orders for Liquid Hydrocarbon Storage Wells following a finding that they do not endanger freshwater strata.

Section 3-308:

Establishes that orders for injection into Enhanced Recovery Injection and Disposal Wells remain valid for the life of the wells, unless revoked for just cause, due to substantial changes of condition or unacceptable cumulative threat to the environment. Also provides procedure for modification, revocation and reissue of an order.

Section 3-309:

Establishes a procedure for transfer of authority to inject, with proper notice and action by the Commission.

The complete rules discussed previously, along with the supporting forms, are included as a part of the state's application package.

It should be noted that the statutory citations included herein are completely up to date; however, a few minor items, such as the number of Field Inspectors and some salary items which are added in annual appropriation bills may differ from herein, since the Oklahoma Statutes are only codified each ten (10) years. These items will be picked up in the 1981 compilation.

I am the Counsel for the Director and the Oklahoma Corporation Commission

which is making the attached Primacy Application. I have studied the application and have analyzed the previously cited Constitutional, statutory and administrative rules provisions used as the legal basis to conduct an underground injection control program.

It is my opinion that the Director has full authority to carry out the program as submitted, and that adequate safeguards exist to satisfy the Commission that underground Injection practices will not endanger sources of drinking water.


Alice Mitchell, Conservation Attorney
Oklahoma Corporation Commission